



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Health.

- ☒ Permanent Rule
☐ Emergency Rule

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☒ Other (specify) 03/05/2009 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- ☐ Immediately upon filing.
☐ Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☒ Yes ☐ No If Yes, explain: March 5, 2009 is the effective date of RCW 70.245, "The Washington Death with Dignity Act." Rules must be in place to comply with the statute.

Purpose: Chapter 246-978 WAC, Death with Dignity Act Requirements, is necessary to carry out the department's responsibility to collect information regarding compliance with chapter 70.245 RCW, "The Washington Death with Dignity Act," and specify in rule the qualifications of the witness designated by a long-term care facility, if the patient is a patient in a long-term care facility.

Citation of existing rules affected by this order:

Repealed: None
Amended: None
Suspended: None

Statutory authority for adoption: Chapter 70.245 RCW

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-02-068 on 01/06/2009 (date).

Describe any changes other than editing from proposed to adopted version: References to I-1000 were changed to chapter 70.245 RCW. Definition of "attending physician" was changed to cite the correct statute, chapter 18.71 RCW. Definition of "health care facility" was deleted. References to "lethal medication" were changed to state "lethal dose of medication." Language was changed to further clarify who may and who may not be a witness in a long-term care facility.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone _____
Address: _____ fax _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

02/19/2009

NAME (TYPE OR PRINT)

Mary C. Selecky

SIGNATURE

Mary C. Selecky

TITLE

Secretary

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 20, 2009
TIME: 8:32 AM

WSR 09-06-010

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>4</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted in the agency's own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
-----	----------	---------	----------	----------	----------

The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>4</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Chapter 246-978 WAC

DEATH WITH DIGNITY ACT REQUIREMENTS

NEW SECTION

WAC 246-978-001 Purpose and authority. This chapter is adopted by the Washington state department of health to implement the provisions of chapter 70.245 RCW, the Washington Death with Dignity Act.

NEW SECTION

WAC 246-978-010 Definitions. For the purpose of this chapter, the following definitions apply:

(1) "Act" means the "Washington Death with Dignity Act" or Initiative Measure No. 1000 as adopted by the voters on November 4, 2008, codified as chapter 70.245 RCW.

(2) "Adult" means an individual who is eighteen years of age or older.

(3) "Attending physician" means the physician, as defined in chapter 18.71 or 18.57 RCW, who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(4) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.

(5) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(6) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

- (7) "Department" means the department of health.
- (8) "Dispensing record" means a copy of the Pharmacy Dispensing Record form, DOH 422-067.
- (9) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.
- (10) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:
- (a) His or her medical diagnosis;
 - (b) His or her prognosis;
 - (c) The potential risks associated with taking the medication to be prescribed;
 - (d) The probable result of taking the medication to be prescribed; and
 - (e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.
- (11) "Long-term care facility" means a facility licensed under chapter 18.51 or 72.36 RCW.
- (12) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.
- (13) "Patient" means a person who is under the care of a physician.
- (14) "Physician" means a doctor of medicine, as defined in chapter 18.71 RCW, or osteopathy, as defined in chapter 18.57 RCW, licensed to practice medicine in the state of Washington.
- (15) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of the act in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.
- (16) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.
- (17) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

NEW SECTION

WAC 246-978-020 Reporting. (1) To comply with the act, within thirty calendar days of writing a prescription for medication to end the life of a qualified patient, the attending physician shall send the following completed, signed, and dated documentation by mail to the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504:

(a) The patient's completed written request for medication to end life, either using the Written Request for Medication to End My Life in a Humane and Dignified Manner form, DOH 422-063, or in substantially the same form as described in the act;

(b) Attending Physician's Compliance form, DOH 422-064;

(c) Consulting Physician's Compliance form, DOH 422-065; and

(d) Psychiatric/Psychological Consultant's Compliance form, DOH 422-066, if an evaluation was performed.

(2) Within thirty calendar days of a qualified patient's ingestion of a lethal dose of medication obtained under the act, or death from any other cause, whichever comes first, the attending physician shall complete the Attending Physician's After Death Reporting form, DOH 422-068.

(3) To comply with the act, within thirty calendar days of dispensing medication, the dispensing health care provider shall file a copy of the Pharmacy Dispensing Record form, DOH 422-067, with the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504. Information to be reported to the department shall include:

(a) Patient's name and date of birth;

(b) Patient's address;

(c) Prescribing physician's name and phone number;

(d) Dispensing health care provider's name, address and phone number;

(e) Medication dispensed and quantity;

(f) Date the prescription was written; and

(g) Date the medication was dispensed.

NEW SECTION

WAC 246-978-030 Confidentiality--Liability. All information collected by the department under the act shall not be a public record and may not be available for inspection by the public under chapter 42.56 RCW. This information includes, but is not limited to, the identity of patients, health care providers, and health care facilities.

NEW SECTION

WAC 246-978-040 Qualifications of witness in a long-term care facility. When a patient makes a written request for medication under the act, they must have at least two witnesses who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request. The patient's attending physician at the time the request is signed may not be a witness.

If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses must be designated by the long-term care facility. The witness designated by the long-term care facility may be, but is not limited to, an ombudsman, chaplain, or social worker. The witness designated by the long-term care facility may not be:

- (1) A relative of the patient by blood, marriage, or adoption;
- (2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or
- (3) An owner, operator, or employee of a long-term care facility where the qualified patient is receiving medical treatment or is a resident.